IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5275 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI KAMLESH KANAIYALAL JANI C/O MUKESH KANAIYALAL JANI
Versus
ORIENTAL BANK OF COMMERCE THROUGH ITS CHAIRMAN AND

Appearance:
1. Special Civil Application No. 5275 of 1987
M/S TRIVEDI & GUPTA for Petitioner No. 1
MR KV SHELAT for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH
Date of decision: 26/03/2004

ORAL JUDGEMENT

The petitioner, who was at the relevant time, serving as a Branch Manager with the respondent Bank, has filed this Special Civil Application under Article 226 of the Constitution of India for declaring the provisions of Regulation 8 of Oriental Bank of Commerce Officers, Employees (Conduct) Regulations, 1982 are unguided and

uncanalised and violating the provisions of Articles 14 and 16 of the Constitution of India to the extent to which the said provisions purports to confer blanket powers on the disciplinary authority not to institute departmental inquiry in respect of any of the minor penalty as specified in Regulation 4 thereof. It is also further prayed by the petitioner for declaring the action of the respondents in appropriating the sum of Rs. 24,000 representing the Bank's Contribution to the petitioner's Provident Fund and Rs. 18,000 representing Gratuity dues of the petitioner as illegal and violative of Articles 14 and 16 of the Constitution of India. The petitioner has also prayed for an appropriate order directing the respondents to release the amount of P.F. and Gratuity dues to the tune of Rs. 54,115.00 ps. By way of ad-interim relief, the petitioner has also prayed for directing the respondents to pay a sum of RS. 13,115.09 representing petitioner's contribution towards his own P.F. dues and by deducting therefrom a sum of RS. 5,713.34 for adjustment of amount towards vehicle loan and excess arrears paid to the petitioner.

2. Heard learned advocate, Mr. Barot for M/s. Trivedi & Gupta for the petitioner and Mr. K.V. Shelat, ld. advocate appearing on behalf of respondent Bank. At the time when the matter is called out for final hearing today, it was submitted by Mr. K.V. Shelat on behalf of the respondent Bank that so far as the amount of RS. 13,115.09 ps. representing petitioner's contribution towards his own P.F. dues is concerned, the said payment is already made and therefore the grievance made in respect thereto does not survive.

3. Mr. Barot, ld. advocate appearing for the petitioner has submitted that as per Regulation 8 of Oriental Bank of Commerce Officer Employees' (Conduct) Regulations, 1982 (hereinafter referred to as "the Regulations"), the Bank is authorised to impose minor penalty without holding any departmental inquiry and it confers blanket powers on the disciplinary authority not to institute departmental inquiry in respect of any of the minor penalty envisaged in Regulation 8 of the Regulations and therefore at times the said powers are exercised and the authority acts arbitrarily and malafide and the same therefore is in violation of the provisions of Articles 14 and 16 of the Constitution of India. Regulation 8 of the Regulations reads as under;

8. Procedure for imposing minor penalties:

(1) Where it is proposed to impose any of the minor penalties in clauses (a) to (e) of regulation 4, the officer employee concerned shall be informed in writing of the imputations of lapses against him and given an opportunity to submit his written statement of defence within a specified period not exceeding 15 days or such extended period as may be granted by the Disciplinary Authority and the defence statement, if any, submitted by the officer employee shall be taken into consideration by the Disciplinary Authority before passing orders.

(2) Where, however, the Disciplinary Authority is satisfied that an enquiry is necessary, it shall follow the procedure for imposing a major penalty as laid down in regulation 6.

(3) The record of the proceedings in such cases shall include:-

(i) a copy of the statement of imputations of lapses furnished to the officer employee;

(ii) the defence statement, if any, of the officer employee; and

(iii) the orders of the Disciplinary Authority together with the reasons therefor."

4. It is further submitted on behalf of the petitioner that the action of the respondent in appropriating the amount of RS. 24,000/= representing Bank's contribution to petitioner's Provident Fund and appropriating Rs. 18,000/= representing Gratuity dues of the petitioner is absolutely illegal and violative of Articles 14 and 16 of the Constitution of India. It is submitted on behalf of the petitioner that even before appropriating the said amount and before imposing minor penalty even the procedure which was required to be followed under Regulation 8 is not followed and the amount has been appropriated without giving any opportunity to the petitioner and without issuing any show cause notice and the same is also against the principles of natural justice and therefore the same is

required to be quashed and set aside. It is also further submitted on behalf of the petitioner that even under the provisions with regard to Provident Fund and Gratuity nobody can appropriate the amount of P.F. and Gratuity and therefore the action of the respondents requires to be quashed and set aside.

5. On the other hand, Shri Shelat appearing for the respondent Bank has submitted that before appropriating the aforesaid amount representing the Bank's contribution to the petitioner's Provident Fund and representing gratuity dues of the petitioner, a show cause notice was served upon the petitoner and as it was found that because of conduct of the petitioner to sanction the loan in favour of one Raju Maternity & Nursing Home, the Bank has sufferred huge loss and therefore after giving the aforesaid notice and as no reply was given by the petitioner within the stipulated time the aforesaid amount was appropriated. It is further submitted on behalf of the petitioner that so far as challenge to the vires of Regulation 8 is concerned, it is a statutory rule and even in Regulation 8 before inflicting minor penalty certain procedure is required to be followed and therefore it cannot be said that Regulation 8 is ultra vires and violative of Articles 14 and 16 of the Constitution of India. Therefore according to him the petition deserves to be dismissed.

6. I have heard the learned advocates on behalf of the petitioner. So far as the challenge to the provisions of Regulation 8 of the Regulations is concerned, I do not propose to go into the validity of the same as the petition is likely to succeed on another ground and therefore I do not deal with the same at present.

7. So far as Regulation 8 of the Regulations is concerned, it stipulates that where it is proposed to impose any of the minor penalties in clausess (a) to (e) of Regulation 4, the officer-employee concerned shall be informed in writing of the imputations of lapses against him and give an opportunity to submit his written statement of defence within a specified period not exceeding 15 days or such extended period as may be granted by the Disciplinary Authority and the defence statement, if any, submitted by the officer employee shall be taken into consideration by the Disciplinary Authority before passing orders. It is also envisaged under sub-Regulation (2) of Regulation 8 that when the Disciplinary Authority is satisfied that an enquiry is necessary he shall follow the procedure for imposing a major penalty as laid down in Regulation 6. Thus, from

the bare reading of Regulation 8, it is clear that even before imposing the minor penalty, the officer concerned is required to be informed in writing of the imputations of lapses against him and he is required to be given an opportunity to submit his written statement of defence within a stipulated time and thereafter after considering the statement of defence if any the Disciplinary Authority shall pass orders and if not satisfied the Disciplinary Authority shall follow the procedure for imposing a major penalty.

8. From bare reading of the notice issued by the Bank upon the petitioner dated 23rd August, 1985, it is crystal clear that the said show cause notice was issued calling upon the petitioner to show cause within 20 days as to why a lien should not be marked on Bank's contribution to the P.F. and gratuity dues amount amounting to RS. 24,000/= and Rs. 18,000 respectively. Thus, no opportunity has been given to the petitioner for imposing minor penalty as envisaged under Regulation 8 of the Regulations. The petitioner is also not served with any show cause notice to show cause why the aforesaid amount should not be appropriated and even there is no formal inquiry with regard to the loss caused to the Bank. At this stage, Mr. K.V. Shelat has submitted that action was taken by the Bank with regard to appropriation of the amount and on the basis of recommendations of the C.V.C. the amount in question was appropriated. The learned advocate, Shri Shelat has vehemently relied upon the notice dated 23rd August 1985 to show that an opportunity of being heard was given to the petitioner. As stated hereinabove, the said show cause dated 23rd August 1985 was only for the purpose of having a lien and not a notice as contemplated under Rule 8 of the Rules. To give a notice for having a lien and to give a notice to show cause why the amount of P.F. and Gratuity for the loss caused to the Bank is a different thing. Thus, it cannot be said that the Bank has followed the procedure as required under Rule 8 of the Rules. When the Regulation 8 envisages certain procedure which is required to be followed before imposing minor penalty and the same is not followed, the action of the respondent in appropriating the aforesaid amount of RS. 24,000/= representing Bank's contribution to the petitioner's P.F. and Rs. 18,000/= representing Gratuity dues of the petitioner, is illegal and not justified and contrary to even Regulation 8 of the Bank's Regulations, and therefore the said action is required to be quashed and set aside. Mr. Shelat has also submitted that an amount of Rs.5,713.34 ps. is due and payable by the petitioner towards the loan amount, which is not paid

by the petitioner till date and therefore the said amount is to be deducted while passing final order with regard to the aforesaid amount. The submission of Mr. Shelat is required to be accepted, as when the aforesaid amount of RS. 5,713.34 ps is due and payable by the petitioner towards the loan amount he cannot retain the same and therefore the said amount is required to be deducted while passing final order with regard to refund of the amount.

9. For the foregoing reasons, the action of the respondent Bank, in appropriating the amount of RS. 24,000/= representing the Bank's contribution to petitioner's Provident Fund and Rs. 18,000/= representing Gratuity dues of the petitioner, is hereby queshed and set aside. The respondent Bank is directed to refund the aforesaid amount totalling Rs. 42,000/= after deducting the amount of Rs. 5,713.34 ps. to the petitioner within a period of four weeks from the date of receipt of writ of this order or on production of certified copy of this order whichever is earlier. The petition is allowed accordingly. Rule is made absolute accordingly with no order as to costs.

rmr. [M.R. Shah, J.]